

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL  
INDUSTRY AVERAGE WHOLESALE  
PRICE LITIGATION

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MDL NO. 1456

CIVIL ACTION: 1:01-CV-12257-  
PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

*State of Florida, et al. v. Mylan  
Inc., et al.*, Civil Action No. 98-3032G

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**PLAINTIFFS' MOTION FOR LEAVE TO FILE REVISED MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO REMAND**

The Plaintiffs, the State of Florida, Office of the Attorney General, Department of Legal Affairs (hereinafter "the Attorney General"), by and through the below signed Assistant Attorneys General, and the Relator, Ven-A-Care of the Florida Keys, Inc. (hereinafter "the Relator"), by and through the below signed counsel, file this motion for leave to file a revised memorandum of law in support of their previously filed motion and incorporated memorandum of law seeking remand of this action to state circuit court pursuant to Local Rule 7(B)(3). In support of this motion, the Plaintiffs say:

1. This is the Plaintiffs' motion for leave to file a revised memorandum of law in support of their previously filed and timely filed motion to remand this action to the state circuit court pursuant to Local Rule 7(B)(3).

2. In support of this motion, the Plaintiffs say they wish to file a revised memorandum of law to tailor it to nuances of law of the United States District Court for the District of Massachusetts and the United States First Circuit Court of Appeals where this action is now pending, rather than the United States District Court for the Northern District of Florida and the United States Eleventh Circuit Court of Appeals where this action was originally pending. The Plaintiffs also wish to include discussions concerning new case law from the United States Supreme Court. The Plaintiffs believe that a revised memorandum of law supporting their previously filed motion will significantly aid the Court in evaluating the issues before it.

3. The Plaintiffs propose the following briefing schedule: the Plaintiffs shall submit a revised memorandum of law within 30 days of the date of this Court's Order granting the Plaintiffs' Motion. The Defendants shall have 20 days from the date the Plaintiffs file their revised memorandum to file a responsive memorandum. The Plaintiffs shall have 20 days from the date of the Defendants' responsive memorandum to file a reply memorandum.

4. Pursuant to Local Rule 7.1, the Plaintiffs consulted with counsel for the Defendants concerning this motion and the proposed briefing schedule. The below signed counsel was advised by the Defendants that they do not have a "serious" objection to this motion or the proposed briefing schedule. However, the Defendants have not yet formally consented to this Motion or the proposed briefing schedule, despite the Plaintiffs' prolonged attempts to secure their consent.

### **MEMORANDUM OF LAW**

The Plaintiffs seek leave to file a revised memorandum of law in support of their previously filed motion to remand this action to state circuit court to address the law of the First Circuit Court of Appeals and the District of Massachusetts. The Plaintiffs' previously-filed motion and memorandum of law focused on the law of the Eleventh Circuit Court of Appeals and the United States District Court for the Northern District of Florida. The Plaintiffs further seek leave to file a revised memorandum of law so they may incorporate discussion concerning a recent decision from the United States Supreme Court on removal, federalism, and remand. The Plaintiffs believe the revised memorandum of law will significantly aid the Court in evaluating the issues pending before it.

The Plaintiffs propose the following briefing schedule: the Plaintiffs shall submit a revised memorandum of law within 30 days of the date of this Court's Order granting the Plaintiffs' Motion. The Defendants shall have 20 days from the date the Plaintiffs file their revised memorandum to file a responsive memorandum. The Plaintiffs shall have 20 days from the date of the Defendants' responsive memorandum to file a reply memorandum.

As required by Local Rule 7.1, the Plaintiffs consulted with counsel for the Defendants concerning this motion and the proposed briefing schedule. The below signed counsel was advised by the Defendants that they do not have a "serious" objection to this motion or the proposed briefing schedule. However, the Defendants have not yet formally consented to this Motion or the proposed briefing schedule, despite the Plaintiffs' prolonged attempts to secure their consent.

**CONCLUSION**

For the reasons stated above, the Plaintiffs' motion for leave to file a revised memorandum of law in support of their motion to remand should be granted.

Respectfully submitted this 7th day of September, 2006.

CHARLES J. CRIST, JR.  
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**CERTIFICATE OF SERVICE**

I hereby certify that I, Jonathan Shapiro, an attorney, caused a true and correct copy of the foregoing Status Report to be served on all counsel of record electronically on September 7, 2006, pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LEXIS File & Serve electronic filing service. I hereby also certify that a copy hereof was furnished via U.S. Mail this 7<sup>th</sup> day of September, 2006, to the following:

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